

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

**MALIN INTERNATIONAL SHIP
REPAIR & DRYDOCK, INC.,**

Plaintiff,

VS.

**M/T PTI AMAZON, her apparel,
equipment, engines, freights, tackle,
etc., *in rem*,**

Defendant.

[illegible]

CIVIL CASE NO. _____

FED. R. CIV. P. 9(h)
Admiralty Claim

VERIFIED ORIGINAL COMPLAINT

COMES NOW, Plaintiff, Malin International Ship Repair & Drydock, Inc. (“Malin” or “Plaintiff”) and for its complaint against the M/T PTI AMAZON, her apparel, equipment, engines, freights, tackle, etc., *in rem*, respectfully avers as follows:

Jurisdiction and Venue

1. Malin's *in rem* claims are within the admiralty and maritime jurisdiction of the Court, and Malin's claims are admiralty or maritime claims within the meaning of Fed. R. Civ. P. 9(h). The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1333 *et seq.*, and Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims.

2. Venue is proper because the M/T PTI AMAZON, is located in this District and Division, and all or a substantial portion of the goods, services, and necessities provided by Plaintiff were provided in this District and Division.

Parties

3. Malin (“Malin”) is a Florida Corporation with its principal place of business in Galveston, Texas, and is authorized to do business in this State. Malin operates a shipyard and supplies vessels with repairs, dry-docking, parts, supplies, and other necessities.

4. The M/T PTI AMAZON is a vessel that, upon information and belief, is registered in Malta, bearing IMO No. 9313474. Upon information and belief, the M/T PTI AMAZON is, was managed by G-Marine Service Co. Ltd., a company authorized to procure necessities on behalf of the vessel. G-Marine Service Co. Ltd. is bound to make payment through maritime attachment liens and contracts with Malin. Said vessel is now, or will be during the pendency of process hereunder, within this district and within the jurisdiction of this Honorable Court, and she is presently located at Malin’s Galveston yard, 320 77th Street, Galveston, Texas 77554.

Factual Background

5. Malin is a shipyard that has and continues to supply goods, services, and other necessities to the M/T PTI AMAZON. *See* Affidavit of David A. Dudley, Senior Vice President of Shipyard Operations, attached hereto as Exhibit 1. Malin’s contract requires payment in full prior to the departure of the M/V PTI AMAZON. *Id.* Payment has not been received by Malin and the vessel is preparing to depart Galveston. *Id.*

7. The outstanding debt currently due for goods, services and other necessities provided by Malin to the M/T PTI AMAZON totals at least \$74,959.26. *Id.* Because the M/T PTI AMAZON continues to occupy a berth at Malin’s facility, berthage fees and related

services provided to the vessel continue to accrue and will become due during the pendency of this suit.

9. Malin has demanded payment for the outstanding invoices currently due, but no payment from G-Marine Service Co. Ltd. has been forthcoming. *Id.* No offsets or credits are due. Therefore, G-Marine Service Co. Ltd. is liable for this unpaid balance in the amount of \$74,959.26, as well as for invoices that become due during the pendency of this action and any additional goods and services which Malin may be asked to provide or forced to undertake. The M/T PTI AMAZON remains at Malin's Galveston shipyard, and Malin is therefore entitled to the berthage that continues to accrue until the vessel is released or sold.

10. The goods and services provided by Malin to the The M/T PTI AMAZON constitute necessities for the purposes of the Federal Maritime Lien Act, 46 U.S.C. § 33141 *et seq.*, as the goods and services were reasonably necessary in and for the conduct of the business of the vessel and enabled the vessel to perform her particular function. Therefore, Plaintiff has a preferred maritime lien against the vessel for such domestic necessities.

Rule C, *in rem* against the M/T PTI AMAZON

11. Malin repeats, re-alleges, and incorporates as if fully set forth herein, the foregoing paragraphs.

12. Malin provided goods, services and other necessities to the M/T PTI AMAZON. To date, G-Marine Service Co. Ltd., as manager of the M/T PTI AMAZON has not paid for such services despite an agreement to do so, and despite demands for payment.

13. Malin has suffered damages and losses, and is now entitled to a maritime lien for necessities against the M/T PTI AMAZON in the amount of at least \$74,959.26, exclusive of interest, and costs, and attorneys' fees. Additionally, because the M/T PTI AMAZON remains at Malin's facility, charges continue to accrue.

**Breach of Maritime Contract, *in rem*, against the
M/T PTI AMAZON**

14. Malin repeats, re-alleges, and incorporates as if fully set forth herein, the foregoing paragraphs.

15. Malin provided goods, services, and other necessities to the M/T PTI AMAZON pursuant to an agreement with Triple H No. 2, Ltd. and/or Hyundai Glovis Co., Ltd. G-Marine Service Co. Ltd. for such provision. To date, the M/T PTI AMAZON is obligated to pay at least \$74,959.26, exclusive of interest, and costs, and attorneys' fees, for these services, but has refused to make payment as agreed.

Additionally, because the M/T PTI AMAZON remains at Malin's facility, charges continue to accrue.

**Unjust Enrichment/Quantum Meruit, *in rem*,
against the M/T PTI AMAZON**

16. Malin repeats, re-alleges, and incorporates as if fully set forth herein, the foregoing paragraphs.

17. In the alternative and without waiving the above, Malin is entitled to recover the amount due from G-Marine Service Co. Ltd. based upon promises implied by law under the theory of unjust enrichment. Specifically, Malin provided goods, services, and other necessities to the M/T PTI AMAZON, which goods and services were accepted, used, and

enjoyed by the M/T PTI AMAZON, and under such circumstances as reasonably notified the M/T PTI AMAZON that Malin was expecting to be paid.

18. The M/T PTI AMAZON's actions in the above facts constitute unjust enrichment. The agreed and/or fair and reasonable value and benefit for the unpaid goods, services, and other necessities totals at least \$74,959.26, all to Malin's actual damage in the amount of at least \$74,959.26, to date. Additionally, because the M/T PTI AMAZON remains at Malin's facility, charges continue to accrue.

Conditions Precedent

22. All conditions precedent have been performed or have occurred.

Priority of Liens

23. The M/T PTI AMAZON's unpaid obligations for necessities resulted in maritime liens against the M/T PTI AMAZON to which any Ship Mortgages are subordinate pursuant to 46 U.S.C. § 31326(b)(2).

Rule C

24. Pursuant to Supplemental Rule E(5)(a), Malin requests that the Court fix the principal amount of the bond or other security to obtain the M/T PTI AMAZON's release at an amount sufficient to cover the amount of Malin's claim with accrued interest and costs and further requests that the Court require that the bond or other security be conditioned for the maximum permitted by Rule E(5), which permits security up to twice the amount of Malin's claim.

Conclusion and Prayer

26. Malin is entitled under Rule C to arrest the M/T PTI AMAZON, which is subject to a maritime lien for goods and services provided by Malin and that remain due and owing.

27. No waiver is intended of any rights or remedies Malin may have under any agreement among the parties or by law, which rights and remedies are specifically reserved.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Malin prays as follows:

1. Issue Warrant of Arrest for the M/T PTI AMAZON, commanding the United States Marshal to arrest the vessel and take it into custody;
2. Order the M/T PTI AMAZON to be condemned and sold to pay the costs of *custodia legis* and damages owed to Malin;
3. That a judgment be entered in favor of Malin against the M/T PTI AMAZON, her apparel, equipment, engines, freights, tackle, etc., *in rem*, for at least the \$74,959.26 owed, plus charges accrued during the pendency of this litigation, berthage, additional shipyard goods, shore power, and services provided, attorneys' fees, court costs and additional accrued interest;
4. That this Court grant Plaintiff such other and further relief to which it may show itself justly entitled at law, in equity, or in admiralty.

Respectfully submitted,

CLARK HILL PLC

By: _____



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